

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 88 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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METROCHEM INDUSTRIES LIMITED

Versus

MRINAL DYEING & MANUFACTURING COMPANY LIMITED

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Appearance:

MR ASHOK L SHAH for Petitioner

MRS SWATI S SOPARKAR for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 18/09/96

ORAL JUDGEMENT

By this petition, the petitioning company has sought an order for winding up of the respondent company M/s.Mrinal Dyeing and Manufacturing Company Limited ('the respondent company' for short) under the provisions of Sections 433,434 read with Section 439 of the Companies Act,1956 ('the said Act' for short).

The petitioning company is incorporation under the

provisions of the said Act and having its registered office at P.O. Umraiya, Taluka Padra, District Vadodara.

The respondent company is also a public company limited by shares and was incorporated on 10.8.1988 under the provisions of the said Act.

The petitioning company has inter alia contended that:

(i) the respondent company had taken from it short term intercorporate deposit of Rs.50,00,000/with interest at the rate of 23% per annum which was repayable on 8.2.1996;

(ii) the respondent company had issued two advanced dated cheques both dated 8.2.1996 bearing Nos. 875918 and 875920 drawn on Central Bank of India. Marine Lines, Bombay for Rs. 50,00,000/and Rs.2,18,343/- respectively for principal and interest.

(iii) that it was on the basis of the solemn assurance by the respondent company that the said cheques would be honoured when presented for payment and that on no account the said cheques would be returned unpaid or dishonoured and on the personal guarantee of its Managing Director that he petitioner had advanced the said inter corporate deposit to the respondent company.

(iv) that going back on its promise and assurance, when the due date for payment drew nearer, the company showed its inability to honour its commitment and requested the petitioner to hold back the said cheques.

(v) However, the petitioner company categorically informed the company that it did not agree to the request made by the company and that it wanted its inter corporate deposit to be repaid on its due date.

It is also the case of the petitioner company that when the said two cheques were presented for payment, they were returned unpaid and dishonoured by the respondent's bankers with their cheque return memo both dated 9/2/1996 with the remarks 'Refer to drawer'. The said note of the bank and original cheques are produced on record.

Immediately, thereafter, the petitioner company had sent a

telegram to the respondent company pointing out that the said two cheques issued by the company were returned unpaid by its bankers with the remarks 'funds insufficient' and the respondent company was called upon to pay the said dues to petitioner company. A copy of the said telegram dated 15.2.1996 is produced on record. The petitioner also sent their advocate's notice dated 15.2.1996 calling upon the company to pay up the petitioner's said dues together with interest till payment and further stated that in case the company failed to pay as called upon in the said notice, the petitioner would initiate appropriate proceedings including initiation of winding up proceedings. A copy of the said notice is produced on record.

The respondent company received the said telegram and no attempt was made to pay the said dues. No reply was given to the statutory notice

According to the petitioner's case, an amount of Rs. 54,25,504/- was due and payable by the respondent to the petitioner company. It is contended that the company is, therefore, unable to pay its debts as and when the same become due and payable and no response or payment has been made.

It appears from the record and uncontroverted averments made in the petition that instead of notice of demand, the respondent company has failed and neglected to pay the dues of the petitioner company. There is evidence on record to support the contention of the petitioner company that the respondent has gone commercially insolvent. It is the case of the petitioner company that the respondent company has become unable to pay its debts and, therefore, prayer is made to order to wind up the respondent company.

In absence of any reply to notice, statutory notice and also the petition, and in absence of any counter-affidavit on behalf of the respondent company, this court is satisfied that the dues claimed by the petitioner company are due and payable by the respondent company to the petitioner company. Those dues are proved. Not only that, despite several efforts, the respondent company has not paid the dues of the petitioner company. Two cheques have bounced. No reply is given to the statutory notice. No reply is filed, no counter affidavit is filed in this petition. Obviously, therefore, there would be a presumption about inability on the part of the respondent company to pay dues payable by it.

It may also be noted that there are several petitions filed by several creditors against the respondent company.

Keeping in mind the object and purpose of provisions of Section 433 read with Section 434 of the Act and the factual scenario narrated hereinabove and emerging from the record of the present case, this court is amply satisfied that the substratum of the respondent company has gone so down that the order of winding up is required to be passed as the respondent company has become commercially insolvent to pay up debts. The petitioner company has successfully established the liability of the respondent company and also the inability of the respondent company to pay its debts. In the circumstances, this court is inclined to exercise power in favour of the petitioner company in passing the order of winding up against the respondent company.

In the result, the petition is allowed. The respondent company M/s. Mrinal Dyeing and Manufacturing Company Limited is ordered to be wound up and the Official Liquidator attached to this court is hereby appointed as Official Liquidator with powers under Section 457 of the Act. Accordingly, the petition stands disposed of.

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